

**Amendment and Response [Under 37 C.F.R. §1.116 - Expedited Examining Procedure]**

Page 6 of 9

Applicant: Boldogh et al.

Serial No.: 10/691,330

Filed: October 22, 2003

Title: USE OF COLOSTRININ, CONSTITUENT PEPTIDES THEREOF, AND ANALOGS THEREOF AS INHIBITORS OF APOPTOSIS AND OTHER CELLULAR DAMAGE

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**Remarks**

The Office Action mailed September 29, 2005 has been received and reviewed. Claims 1, 7, and 12 having been amended and claims 16-23 having been canceled, the pending claims are claims 1-15. Reconsideration and withdrawal of the rejections are respectfully requested.

**Examiner Interview**

A telephonic interview was held on November 15, 2005, between Examiner Chih-Min Kam, Supervisory Patent Examiner Kathleen Kerr and Applicant's Representative Nancy Johnson, in which the objection to the disclosure and the rejection of the claims under 35 U.S.C. §112, first paragraph, were discussed. Examiners Kam and Kerr are thanked for the courtesy of this interview.

**Objection to the Disclosure**

The Examiner has maintained the objection to the disclosure, asserting that the "instant application claims the benefit of a PCT Application No. PCT/US03/33423 under 35 U.S.C. 120, however, the specification does not indicate whether the instant application is a continuation, divisional or CIP of the PCT application in the continuation data on page 1, lines 11-13 of the specification. Appropriate clarification is requested" (page 3, Office Action mailed September 29, 2005).

Applicants respectfully submit that the present application, filed October 22, 2003, claims priority under 35 U.S.C. §119(c) to U.S. Provisional Application Serial No. 60/420,369, filed October 22, 2002. The Declaration, submitted November 3, 2004, inadvertently includes a statement that the application claims the benefit under 35 U.S.C. §120 of any U.S. applications or §365(c) of any PCT international applications designating the United States of America to PCT US 03/33423, filed October 22, 2003. This priority claim is not included in first sentence of the

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Page 7 of 9

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application or on the Supplemental Data Sheet (submitted herewith). This application does not claim priority to PCT US 03/33423, filed October 22, 2003.

Submitted herewith, on November 29, 2005, is a Supplemental Application Data Sheet, indicating in the "Domestic Priority Information" section that the present application is a non-provisional of 60/420,369, filed October 22, 2002.

According to MPEP 601.05, bibliographic data, including domestic priority information (see MPEP § 601.05(b)(5)) and foreign priority information (see MPEP 601.05(b)(6)) may be supplied or corrected with a Supplemental Application Data Sheet supplied prior to payment of the issue fee (see MPEP 601.05(c)(1)). "For inconsistencies between information that is supplied by both an application data sheet under this section and other documents[, t]he latest submitted information will govern notwithstanding whether supplied by an application data sheet, an amendment to the specification, a designation of a correspondence address, or by a § 1.63 or § 1.67 oath or declaration" (see MPEP 601.05(d)(1)).

In view of the Supplemental Application Data Sheet submitted herewith, on November 29, 2005, Applicants respectfully submit that the priority claim of the instant application is clear. Reconsideration and withdrawal of the objection to the disclosure is respectfully requested.

**The 35 U.S.C. §112, First Paragraph, Enablement Rejection**

The Examiner rejected claims 1-5 and 7-15 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the Examiner asserted that the specification "does not reasonably provide enablement for the method of inhibiting apoptosis or protecting against DNA damage in a cell . . . wherein the apoptosis inhibitor is an active analog of a constituent peptide of colostrinin consisting of SEQ ID NOs:1-7 or 8, and wherein the active analog comprises a peptide having an amino acid sequence with at least about 15 percent proline and having at least about 70 percent sequence identity to a constituent peptide of colostrinin of SEQ

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Page 8 of 9

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ID NOs:1-7 and 8, and wherein the active analog inhibits apoptosis in a cell" (page 4, Office Action mailed September 29, 2005). Applicants respectfully disagree. However, to expedite prosecution, claims 1, 7, and 12 have been amended to delete recitations to active analogs of colostrinin constituent peptides. Applicants reserve the right to continue the prosecution, without prejudice, of claims drawn to active analogs of colostrinin constituent peptides in related applications. Reconsideration and withdrawal of this rejection of the claims under 35 U.S.C. §112, first paragraph, is respectfully requested.

**The 35 U.S.C. §112, First Paragraph, Written Description Rejection**

The Examiner rejected claims 1-5 and 7-15 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants respectfully submit that this rejection is moot in view of the amendment of claims 1, 7, and 12 to correct the inadvertent typographical errors in the recitations of SEQ ID NO:4 and SEQ ID NO:8. Support for these amendments to claims 1, 7, and 12 is found, for example on page 10, lines 1, 3, 30, and 32 of the specification and Applicants submit that no new matter is added by these amendments to claims 1, 7, and 12. Reconsideration and withdrawal of this rejection is respectfully requested.

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Page 9 of 9

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It is respectfully submitted that the pending claims 1-15 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for  
**Boldogh et al.**

By  
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November 29, 2005  
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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 29 day of November, 2005, at 11:07am (Central Time).

By: Sara E. Wigant  
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**SUPPLEMENTAL APPLICATION DATA SHEET**

**APPLICATION INFORMATION**

Application Type::	REGULAR
Subject Matter::	UTILITY
CD-ROM or CD-R?::	NONE
Title::	USE OF COLOSTRININ, CONSTITUENT PEPTIDES THEREOF, AND ANALOGS THEREOF AS INHIBITORS OF APOPTOSIS AND OTHER CELLULAR DAMAGE
Attorney Docket Number::	265.00390101
Total Drawing Sheets::	9

## INVENTOR INFORMATION

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**CORRESPONDENCE INFORMATION**

Correspondence Customer Number:: 26813

**REPRESENTATIVE INFORMATION**

Representative Customer Number:: 26813

**DOMESTIC PRIORITY INFORMATION**

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
This Application	Non-Provisional of	60/420,369	10/22/02

## FOREIGN PRIORITY INFORMATION

Application Number:	Country::	Filing Date::	Priority Claimed::
<del>PCT/US03/33423</del>	<del>PCT</del>	<del>10/22/03</del>	<del>YES</del>

## ASSIGNMENT INFORMATION